

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on February 18, 2003 at 8:10 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pamela Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp for these minutes appears at the end of the content it refers to.

Committee Business Summary:

Hearing & Date Posted: HB 579, HB 615, HB 618, HB 460,
2/11/2003

Executive Action: HB 578-Do Pass As Amended, HB 579-
Do Pass As Amended, HB 618-Do Pass

HEARING ON HB 615

Sponsor: REP. EVE FRANKLIN, HD 42, Great Falls, Montana

Opening Statement by Sponsor:

REP. FRANKLIN opened the hearing on HB 615 by stating this is the "Bubble Buffer Bill." This bill would ask for a 36 foot buffer for patients going into seek services at a healthcare facility. By creating a bubble that would protect their personal space when there are protestors, the patients could still access the healthcare providers needed.

This is not a Planned Parenthood issue; this is a reproductive health services issue.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 117}

Proponents' Testimony:

Morgan Sheets, Montana National Abortion Rights Action League (NARAL), stated that what this bill does is to strike a reasonable and responsible balance between a patient's right to access healthcare services and a protestor's right to free speech.

EXHIBIT(juh36a01)

EXHIBIT(juh36a02)

EXHIBIT(juh36a03)

{Tape: 1; Side: A; Approx. Time Counter: 117 - 170}

Linda Gryczan, Montana Women's Lobby, stated to the Committee, that this bill requires eight feet between the patient and protestor and 36 feet from the door of the clinic.

This bill does not criminalize praying, singing, shouting, spitting or whatever else the protestors choose to do, it just moves them away from the door.

{Tape: 1; Side: A; Approx. Time Counter: 170 - 194}

Sammy Butler, Montana Nurses Association (MNA), stated to the Committee that her organization does not take a position on abortion because the members are split on this issue.

However, MNA does support access to healthcare. This bill is about preventing obstruction to health service access.

{Tape: 1; Side: A; Approx. Time Counter: 194 - 214}

Jeri Duran, Intermountain Planned Parenthood (IMPP), informed the Committee that her organization was formed in 1969, IMPP is the largest provider of family planning health services. These services are offered on a sliding scale fee. IMPP has served over 25,000 patients across Montana.

According to a recent survey; over 70% of patients and staff have reported persistent harassment and intimidation when entering a facility. 90% of clinics have reported having to call law enforcement officials to their site because of anti-abortion harassment and violence.

EXHIBIT (juh36a04)

{Tape: 1; Side: A; Approx. Time Counter: 214 - 261}

Stacey James, CEO, Intermountain Planned Parenthood (IMPP), stated that every Thursday, she is harassed and surrounded by protestors. Ms. James has been called a menace, a murderer and has been video-taped and photographed, her private residence has also been photographed.

Ms. James stated to the Committee that only 10% of the services performed at the clinic are abortions. Ms. James' testimony included a story about a young girl who arrived at the clinic with her parents. They were harassed and screamed at by protestors. IMPP does have an injunction against the protestors; however, each time she notifies the authorities, she is required to explain the circumstances surrounding the reason why she notified the police.

{Tape: 1; Side: A; Approx. Time Counter: 261 - 338}

Mark Cadwallader, Private citizen, Board Member of Intermountain Planned Parenthood, stated to the Committee that this bill is neutrally written and provides access for men and for women to healthcare facilities.

{Tape: 1; Side: A; Approx. Time Counter: 338 - 359}

Wayne Riley, Intermountain Planned Parenthood, Security Coordinator, spoke to the Committee about his own protection and that of being a target himself by the protestors. He stated that

all people need their own personal space. Further, he explained people's instinct to the "fight or flight" response.

{Tape: 1; Side: A; Approx. Time Counter: 359 - 392}

Wade Sikorsky, Farmer, stated that he supports HB 615 in that when people's personal space is violated, there tends to be anger and hostility that can lead to violence.

{Tape: 1; Side: A; Approx. Time Counter: 392 - 403}

REP. GUTSCHE, HD 66, is in support of this bill as a former employee, a recipient of their healthcare services currently, and as the Representative for their district. She described first hand, the harassment that exists at the clinic.

{Tape: 1; Side: A; Approx. Time Counter: 403 - 456}

Opponents' Testimony:

Harris Himes, Pastor, spoke to the Committee about some of the language in the act such as "hinders" and "punishment." **Mr. Himes** stated that the protestors are protected by the Freedom to Access Act.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 21}

Julie Millam, Montana Family Coalition, spoke in opposition to this bill, by stating that the protestors have a right to be outside the abortion clinics.

{Tape: 1; Side: B; Approx. Time Counter: 21 - 38}

Greg Trude, Montana Right to Life, spoke to the Committee about the previous testimony provided by the proponents. He stated that the testimony was filled with rhetoric; the rhetoric being that of extremists, violence, harassment. **Mr. Trude** stated that it is his job to educate and their job is to allow abortion all the time, whenever they want it.

{Tape: 1; Side: B; Approx. Time Counter: 38 - 61}

Lani Candelora, Montana Catholic Conference, voiced a concern to the Committee about the language in the bill referring to the six month imprisonment sentence and the \$1,000 fine that would be imposed if this bill passes as it is written.

{Tape: 1; Side: B; Approx. Time Counter: 61 - 76}

Jenny Dodge, Citizens Network, spoke in opposition to this bill; stating that this bill is against the right of parties to assemble. **Ms. Dodge** also spoke about the first physician to perform an abortion and the 1973 decision by the Supreme Court of the United States in Roe vs. Wade.

{Tape: 1; Side: B; Approx. Time Counter: 76 - 113}

Gilda Clancy, Montana Eagle Forum, spoke in opposition to this bill.

{Tape: 1; Side: B; Approx. Time Counter: 113 - 117}

Steven Zelinsky, Physician, stated to the Committee that if this bill passes, it will create "clouds of secrecy" as to what occurs inside the clinics. **Dr. Zelinsky** made further comments about women receiving abortions without being pregnant, the complication rates that are not known, the freedom of speech act being infringed upon and finally, the "informed consent" that is not completed with patients that desire an abortion.

{Tape: 1; Side: B; Approx. Time Counter: 117 - 182}

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. RICE, LANGE, CLARK, GUTSCHE, NEWMAN AND SHOCKLEY

extensively questioned the sponsor, Rev. Himes, Ms. James, Mr. Riley, Dr. Zelinsky, Ms. Howell (IMPP), and Ms. Candelora about access to healthcare, qualifications of the physicians in the clinics, harassment, various county ordinances and agencies that the clinics work with regarding adoptions.

REP. FACEY asked numerous questions of Ms. Candelora in reference to her organization's opposition to this bill. The questions addressed the issues of violence: whether Ms. Candelora or the Bishops of Montana had witnessed the behavior of the protestors at the clinics; whether or not Ms. Candelora believed that the behavior of the protestors was violent or threatening; whether or not the testimony presented was truthful or not; and finally if the Bishops of Montana endorsed "such behaviors of violence and threatening behavior outside the clinics."

{Tape: 1; Side: B; Approx. Time Counter: 182 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 336}

Closing by Sponsor:

REP. FRANKLIN closed the hearing by saying that HB 615 is not an abortion bill. HB 615 is about protecting the right of freedom of speech but also that violence must be prevented. The sponsor then "acted out" what is the standard for personal space and what the proposed standard would be if HB 615 is passed.

{Tape: 2; Side: A; Approx. Time Counter: 336 - 435}

HEARING ON HB 618

Sponsor: **REP. SUE DICKENSON, HD 46, Great Falls, Montana**

Opening Statement by Sponsor:

REP. DICKENSON opened the hearing on HB 618 by stating that this bill will propose to double the reinstatement fee of driving licenses that have been forfeited due to a DUI arrest.

The money derived from this bill will help insure that DUI Task Forces stay "up and operating." One-half of the fee imposed is allocated to these Task Forces.

EXHIBIT (juh36a05)

{Tape: 2; Side: A; Approx. Time Counter: 435 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 43}

Proponents' Testimony:

Al Recke, Cascade County DUI Task Force, spoke in support of HB 618 by stating that the reinstatement fee is the "life blood" of the DUI Task Forces. He further stated that the goal of these Task Forces is to educate; with that, he informed the Committee that in 2001 Minor in Possession (MIP) incidents numbered 600, with a drop to 400 in 2002.

{Tape: 2; Side: B; Approx. Time Counter: 43 - 85}

Dan Smrdel, Cascade County Sheriffs Office, informed the Committee that the money received has been a great aid to the community, with the money used for education and equipment purposes.

{Tape: 2; Side: B; Approx. Time Counter: 85 - 109}

Susan Good, Montana Surgical Specialties, stated to the Community that the program referred to is doing good work and "people who offend and drink and drive need to understand that there will be a stiffer consequence."

{Tape: 2; Side: B; Approx. Time Counter: 109 - 119}

Jenna Caplett, Gallatin County DUI Task Force, spoke in favor of HB 618. She gave the Committee information regarding the "CAT" program, where Montana State University students receive \$1 taxi rides when they have been drinking. "This program has been very successful," stated Ms. Caplett.

{Tape: 2; Side: B; Approx. Time Counter: 119 - 182}

Opponents' Testimony: None

Informational Testimony:

Kent Mollohan, Montana Department of Transportation, Traffic and Safety Bureau, explained to the Committee the process that has been used in the past.

{Tape: 2; Side: B; Approx. Time Counter: 182 - 216}

Questions from Committee Members and Responses:

REP. NEWMAN questioned **REP. DICKENSON** about the monies that may be collected, and if the money will be allocated to the General Fund or to the Task Forces.

{Tape: 2; Side: B; Approx. Time Counter: 216 - 256}

Closing by Sponsor:

REP. DICKENSON closed the hearing on HB 618 by stating that the DUI Task Forces are doing great work; they work on a local level and work for the needs of the local communities. The reinstatement fee is like a user fee; a person pays it if they break the law, so it is appropriate that they pay a little more.

{Tape: 2; Side: B; Approx. Time Counter: 256 - 303}

HEARING ON HB 460

Sponsor: REP. PENNY MORGAN, HD 21, Billings, Montana

Opening Statement by Sponsor:

REP. MORGAN opened the hearing on HB 460 by stating that when Roe vs. Wade was put into statute, little was known about unborn child pain and fetology. REP. MORGAN presented a video to the Committee that explained how an abortion procedure is done. (The audio was recorded.)

EXHIBIT (juh36a06)

EXHIBIT (juh36a07)

EXHIBIT (juh36a08)

{Tape: 2; Side: B; Approx. Time Counter: 303 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 42}

Proponents' Testimony:

Greg Trude, Montana Right to Life, stated to the Committee that this bill will not take away a woman's constitutional right to an abortion. Mr. Trude contends that a patient who is going in for a medical procedure should be informed as to what is going to occur in that procedure. In all other surgeries, the patient is informed of any complications from that surgery. Further, he stated that especially with surgery inutero of pre-born babies, it clearly shows that these babies feel pain.

EXHIBIT (juh36a09)

{Tape: 3; Side: A; Approx. Time Counter: 42 - 77}

Julie Millam, Montana Family Coalition, rose in support of this bill.

{Tape: 3; Side: A; Approx. Time Counter: 77 - 99}

Steven Zelinsky, Physician, informed the Committee that prior to medical school, he was pro-choice. However, after the research and science courses he partook in, he made a cognitive mental change. Dr. Zelinsky re-dedicated himself to research involving fetal pain. He testified that the research indicates when the thalamus is present in a fetus at 6-8 weeks of development, the pain "mechanism" is there for the fetus.

Dr. Zelinsky made statements regarding adverse reactions to amniotic fluid punctures, adverse reactions to noxious actions or toxic substances and that there are free-body responses to these noxious actions. He contends that even though a fetus cannot appreciate pain and cannot communicate pain, the fetus does feel pain.

{Tape: 3; Side: A; Approx. Time Counter: 147 - 384}

Audrey Mendenhall, Medical Diagnostic Ultra-Sonographer, stated to the Committee that in over 15 years, Ms. Mendenhall has observed over 20,000 babies in the womb. Ms. Mendenhall has performed invasive procedures such as amniosentithis. She described other procedures that, in her opinion prove that babies feel pain in the womb.

{Tape: 3; Side: A; Approx. Time Counter: 384 - 451}

Gilda Clancy, Montana Eagle Forum, stated that there is a cost in the Fiscal Note in implementing this bill, however, that should not preclude this bill from being passed.

{Tape: 3; Side: A; Approx. Time Counter: 451 - 500}

Lani Candelora, Montana Catholics Conference, rose in support of HB 460.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 11}

Jenny Dodge, Citizen's Network, rose in support of this bill.

{Tape: 3; Side: B; Approx. Time Counter: 11 - 33}

Harris Himes, Reverend, rose in support of this bill.

{Tape: 3; Side: B; Approx. Time Counter: 20 - 33}

REP. CLARICE SCHRUMPF, HD 12, rose in support of HB 460.

{Tape: 3; Side: B; Approx. Time Counter: 33 - 42}

Opponents' Testimony:

There were no opponents to HB 460 in today's testimony due to a miscommunication in the scheduling of HB 460. The opponents will testify February 19, 2003 on HB 460.

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. THOMAS, RICE, LANGE, EVERETT, RASER, CLARK, and STOKER extensively questioned the proponents that previously testified. Among the issues addressed were: the administration of the anesthetic to the mother and whether the anesthetic would ultimately reach the baby, the minimalization of pain that the fetus may experience, post-abortion syndrome and the development of the thalamus. Also discussed was the issue of the informed consent provision involving the mother.

EXHIBIT(juh36a10)

EXHIBIT(juh36a11)

{Tape: 3; Side: B; Approx. Time Counter: 42 - 300}

Closing by Sponsor:

The closing was postponed until February 19, 2003 when the opponents to HB 460 could testify.

HEARING ON HB 579

Sponsor: REP. JIM SHOCKLEY, HD 61, Victor, Montana

Opening Statement by Sponsor:

REP. SHOCKLEY opened the hearing on HB 579 by stating that this bill is "just a notice law," in that when someone comes before a judge in two different kinds of circumstances, their right to bear arms may be at risk.

The two circumstances that would apply would be in the temporary restraining order situation and the other would be in the criminal context.

EXHIBIT(juh36a12)

{Tape: 3; Side: B; Approx. Time Counter: 300 - 418}

Proponents' Testimony:

Gilda Clancy, Montana Shooting Sports Association, Montana Women's Shooting Association, is in support of this bill and is here today at the request of Gary Marbut of the Montana Shooting Sports Association.

Ms. Clancy stated to the Committee that the current law affects anyone convicted of a TRO, domestic violence charge, disturbing the peace, et cetera. This bill would obligate that people must be informed of the consequences of losing the right to bear arms if they are to plead guilty.

{Tape: 3; Side: B; Approx. Time Counter: 418 - 500}

{Tape: 4; Side: A; Approx. Time Counter: 0 - 16}

Greg Trude, Citizen, rose in support of this bill.

{Tape: 4; Side: A; Approx. Time Counter: 16 - 19}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. SHOCKLEY reminded the Committee to remember his opening when considering HB 579.

{Tape: 4; Side: A; Approx. Time Counter: 19 - 33}

EXECUTIVE ACTION ON HB 579

Motion: **REP. SHOCKLEY** moved that HB 579 DO PASS.

Discussion:

REPS. RICE and **NEWMAN** discussed with the sponsor the case in Texas where this issue was addressed. **REP. NOENNIG** inquired as to Page 3, Lines 21-23 and the reason that language was included. **Mr. MacMaster, Legislative Staffer**, explained an amendment that addressed the language previously referred to.

Motion/Vote: **REP. SHOCKLEY** moved that HB 579 BE AMENDED. Motion carried unanimously. (voice vote)

Motion/Vote: **REP. SHOCKLEY** moved that HB 579 DO PASS AS AMENDED. Motion carried unanimously. (voice vote)

{Tape: 4; Side: A; Approx. Time Counter: 33 - 106}

EXECUTIVE ACTION ON HB 618

Motion: REP. GUTSCHE moved that HB 618 DO PASS.

Discussion:

REPS. RICE, SHOCKLEY, PARKER AND NEWMAN discussed the tabulation of fees that have been passed in other legislative actions and how much the General Fund is being impacted by these fees.

Vote: Motion that HB 618 DO PASS carried unanimously. (voice vote)

{Tape: 4; Side: A; Approx. Time Counter: 106 - 156}

EXECUTIVE ACTION ON HB 578

Motion: REP. SHOCKLEY moved that HB 578 DO PASS.

Motion: REP. SHOCKLEY moved that HB 578 BE AMENDED.

EXHIBIT(juh36a13)

Discussion:

REP. SHOCKLEY discussed the amendment he presented as it refers to Line 14 by stating that this bill will do nothing unless the open-container bill passes. If the monies become available, probation officers may be hired if the money is there.

REP. LASZLOFFY, NOENNIG, LANGE and SHOCKLEY then discussed the use of DOT's money for the hiring of these probation officers instead of being used for highway.

Vote: Motion that HB 578 BE AMENDED carried unanimously. (voice vote)

Motion/Vote: REP. LASZLOFFY moved that HB 578 DO PASS AS AMENDED. Motion carried unanimously. (voice vote)

{Tape: 4; Side: A; Approx. Time Counter: 156 - 354}

ADJOURNMENT

Adjournment: 11:44 A.M.

REP. JIM SHOCKLEY, Chairman

PAMELA SCHINDLER, Secretary

JS/PS

EXHIBIT (juh36aad)